



BERMUDA
1994 : 47

COMMISSION FOR UNITY AND RACIAL EQUALITY ACT 1994

[Date of Assent 28 December 1994]

[Operative Date]

ARRANGEMENT OF CLAUSES

1	Citation	5	Commission responsible to Minister
2	Interpretation, etc.	6	Codes of practice
3	Establishment of Commission for Racial Unity and Equality	7	Protection from giving evidence
4	Functions of the Commission	8	Secrecy
		9	Annual report
		10	Application to Crown

WHEREAS recognition of the right against racial discrimination is in accord with the International Convention on the Elimination of All Forms of Racial Discrimination:

AND WHEREAS the said Convention applies to Bermuda:

AND WHEREAS this right has been confirmed by a number of enactments:

AND WHEREAS it is expedient to make better provisions to affirm this right by making provisions for promoting equality of

COMMISSION FOR UNITY AND RACIAL EQUALITY ACT 1994

opportunity, good relations between persons of different racial groups and the elimination of racial discrimination and institutional racial discrimination:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Citation

1 This Act may be cited as the Commission for Unity and Racial Equality Act 1994 and shall come into operation on a day to be appointed by the Minister by notice published in the Gazette.

Interpretation, etc.

2 (1) In this Act, unless the context otherwise requires,—

"the 1981 Act" means the Human Rights Act 1981;

"the Commission" means the Commission for Unity and Racial Equality established under section 3 of this Act;

"he" includes "she" and cognate expressions shall be construed accordingly;

"the Human Rights Commission" means the Human Rights Commission established under section 13 of the 1981 Act;

"the Minister" means the Minister for the time being responsible for Human Affairs;

"racial group" means a group of persons defined by reference to colour, race, place of origin or ancestry and references to a person's racial group refer to any racial group into which he falls.

(2) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Act.

(3) Where under section 2(2) of the 1981 Act a person is deemed to discriminate against another person because of his race, colour, place of origin or ancestry, or because of his sex, then, for the purposes of this Act, that person shall be deemed to practice racial discrimination or sexual discrimination, as the case may be.

(4) A person practices institutional racial discrimination if he maintains policies, or engages in practices or procedures, which are

intended to, or likely to result in, hardship or economic disadvantage to one racial group as against another.

(5) A comparison of the case of a person of a particular racial group with that of a person not of that group shall be such that the relevant circumstances in the one case are the same, or are not materially different, in the other.

Establishment of Commission for Unity and Racial Equality

3 (1) There shall be a Commission for Unity and Racial Equality consisting of not more than twelve persons who shall be appointed for such term not exceeding three years as may be specified in their respective instruments of appointment.

(2) So far as practicable, members of the Commission shall be such persons as, having regard to their training, knowledge or experience, might reasonably be expected to discharge successfully the functions conferred upon the Commission by section 4.

(3) Subject to subsection (4), the members of the Commission shall be appointed by the Governor, who shall appoint one of them to be Chairman and another to be Deputy Chairman.

(4) The function conferred upon the Governor by subsection (3) shall be exercised by him in accordance with the advice of the Premier who shall consult with the Opposition Leader before tendering such advice.

(5) In the absence of the Chairman the Deputy Chairman shall act as Chairman.

(6) In the absence of both the Chairman and the Deputy Chairman from a meeting the members present at the meeting shall elect one of their members to preside at the meeting.

(7) At a meeting of the Commission no fewer than seven members shall form a quorum.

(8) The Governor, acting upon the recommendation of the Public Service Commission, shall appoint a public officer to be Executive Officer to the Commission.

(9) The Executive Officer appointed under subsection (8) shall be the secretary to the Commission.

(10) The staff of the Commission shall be public officers.

(11) Subject to this Act, the Commission shall regulate its own procedure.

COMMISSION FOR UNITY AND RACIAL EQUALITY ACT 1994

(12) The expenses of the Commission shall be met out of funds to be appropriated annually by the Legislature.

Functions of the Commission

4 (1) Without derogating from the functions of the Human Rights Commission under section 14 of the 1981 Act, the functions of the Commission are—

- (a) to promote equality of opportunity and good relations between persons of different racial groups; and
- (b) to work towards the elimination of racial discrimination and institutional racial discrimination.

(2) The Commission shall keep under review the working of this Act and when so required by the Minister or otherwise thinks it necessary, draw up and submit to the Minister proposals for amending it.

Commission responsible to Minister

5 In the discharge of its functions under this Act the Commission shall be responsible to the Minister.

Codes of practice

6 (1) Subject to the provisions of this section, the Commission may issue codes of practice containing practical guidance for the following purposes, that is to say,—

- (a) for the elimination of racial and sexual discrimination in the field of employment; and
- (b) for the promotion of equality of opportunity in that field between persons of different racial groups and different sexes.

(2) When the Commission proposes to issue a code of practice, it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(3) The Commission shall not, without the prior written approval of the Minister, publish a draft code of practice.

(4) In the course of preparing any draft code of practice for eventual publication under subsection (2) the Commission shall consult with such organisations or associations of organisations representative of employers or of workers as appear to the Commission to be appropriate.

(5) The Commission shall transmit the draft code of practice to the Minister who shall if he approves of it, lay it before both Houses of the Legislature.

(6) A draft code of practice may be approved by resolution of each House of the Legislature and such resolution may be with or without modification of the draft code of practice.

(7) Where a draft code of practice has been approved by both Houses of the Legislature, the Commission shall issue the draft code of practice with such modifications, if any, as may have been approved and the code shall come into effect on such day as the Minister may by order appoint.

(8) The Commission may from time to time revise the whole or any part of a code of practice issued under this section and issue that revised code, and subsections (2) to (7) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code of practice.

(9) A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings; but in any proceedings under the 1981 Act before a board of inquiry or a court any code of practice issued under this section shall be admissible in evidence and if any provision of such a code appears to the board of inquiry or the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(10) Without prejudice to subsection (1), a code of practice issued under this section may, with the approval of the Minister, include such practical guidance as to what steps it is reasonably practicable for employers to take for the purpose of preventing at the work place acts made unlawful by the 1981 Act.

Protection from giving evidence

7 No member of the Commission or any person employed by it shall be required by any court to give evidence relative to information obtained for the purposes of this Act, and no such member or person shall be a competent witness to give evidence.

Secrecy

8 (1) Except in so far as it may be necessary for the due performance of his functions under this Act or other statutory provision, every member, officer and servant of the Commission shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs

COMMISSION FOR UNITY AND RACIAL EQUALITY ACT 1994

of any person that may come to his knowledge in the course of his duties.

(2) A member, officer or servant who communicates any matter referred to in subsection (1) in contravention of this section or who suffers or permits any unauthorized person to have access to any books, papers or records relating to any person shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Annual report

9 (1) The Commission shall as soon as it is practicable so to do and in any case not later than six months after the end of each calendar year make a report to the Minister on the activities of the Commission.

(2) The Minister shall as soon as it is practicable so to do after receiving the Commission's report lay it before both Houses of the Legislature.

Application to Crown

10 (1) This Act applies—

(a) to an act done by a person in the course of service of the Crown—

(i) in a civil capacity in respect of the Government of Bermuda; or

(ii) in a military capacity in Bermuda; or

(b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) A reference in this Act to employment applies to—

(a) service of the Crown in a civil capacity in respect of the Government of Bermuda; or

(b) service of the Crown in a military capacity in Bermuda; or

(c) service on behalf of the Crown for purposes of a statutory body or purposes of a person holding a statutory office,

as it applies to employment by a private person; and for that purpose a reference express or implied to a contract of employment includes a reference to the terms of service.

(3) In this section, "statutory" means set up by or in pursuance of a statutory provision.

COMMISSION FOR UNITY AND RACIAL EQUALITY ACT 1994

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